SUPREME COURT, U.S.

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 390

MICHAEL BONAGURO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

In a seven-count indictment returned in the United States District Court for the Eastern District of New York, petitioner and others were charged with passing $20 counterfeit Federal Reserve Notes, attempting to sell them, possessing them with intent to defraud, and conspiring to commit such offenses in violation of 18 U.S.C. 472 (R. 1). After a jury trial, petitioner and two others were found guilty on Count 1 (conspiracy), Count 5 (passing), Count 6 (attempting to sell),

401-814—70

and Count 7 (possession).[1] On June 23, 1969, petitioner was sentenced to imprisonment for a period of five years on each count, the terms to run concurrently. On appeal, the conviction was affirmed (Pet. App. A).

Petitioner argues here, as he did below, that his conviction should be set aside because (1) the evidence was not sufficient to support his conviction on both the conspiracy and substantive counts (Pet. 5–13), (2) the admission of testimony concerning $1,978 in genuine currency which petitioner had in his wallet at the time of his arrest was prejudicial error (Pet. 13–16) and (3) the jurors were permitted to return their verdict without an adequate understanding of the distinction between guilt of conspiracy and guilt of aiding and abetting another in the commission of crimes charged in the substantive counts (Pet. 16–26). Each of these arguments was carefully considered and properly rejected by the court of appeals in a comprehensive opinion on which we rely here.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

AUGUST 1970.

---

[1] Counts Two, Three and Four, relating to a separate transaction allegedly taking place on July 19, 1968, were dismissed by the trial court at the close of the government's case.